IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12682 of 2006
With
CIVIL APPLICATION No. 7841 of 2007
In
SPECIAL CIVIL APPLICATION No. 12682 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANJIBHAI GODADBHAI CHAUDHARY - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR GM JOSHI for Petitioner(s) : 1,
MR KL PANDYA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 26/11/2007

ORAL JUDGMENT

1. With the consent of the learned Counsel

appearing for both the sides, the main Special Civil Application itself is taken up for final hearing as the record is complete in view of the production of subsequent material in the proceedings of the Civil Application No. 7841 of 2007.

2. The short facts of the case appear to be that the petitioner was working as the Junior Pharmacist and at that time, one Criminal Case was filed by the Superintendent of Community Health Centre, Lanva, Taluka Chanasama under Section 409, 420, 467, 468 and 114 of IPC against the petitioner and one Jagdish Kumar Babaldas Nayak, alleging that there were irregularities and misappropriation of Rs.2,52,763.90. The Criminal Court of the Chief Judicial Magistrate in Criminal Case No.13 of 2002 ultimately after trial convicted the petitioner and imposed punishment of imprisonment of six months and a fine of Rs.5,000/-. The aforesaid judgement was delivered by the Criminal Court on 31.12.2006. It appears that thereafter vide order dated

21.1.2004, notice was given for dismissal on the ground of conviction by the Criminal Court and vide order dated 18.3.2004, the petitioner was dismissed from service. It may also be recorded that after the institution of criminal case vide Crime Register No.78 of 1993 against the petitioner and the petitioner having been arrested by the police on 10.3.1994 vide order dated 2.5.1994 read with 9.9.1994, he was placed under suspension pending the aforesaid criminal proceedings.

3. The petitioner preferred appeal against the order of conviction being Criminal Appeal No.1 of 2004 before the Additional Sessions Judge at Patan and vide judgement dated 6.11.2004 of the learned Sessions Judge, the conviction was set aside and the petitioner was acquitted. It is under these circumstances, the contention of the petitioner is that in view of the conviction being set aside by the Sessions Court, he is entitled to be reinstated in service. It may also be recorded that pending the aforesaid, disciplinary proceedings were also initiated

against the petitioner and thereafter the Inquiry Officer was appointed for various charges and as per the report of the Inquiry Officer the charges were proved. The matter had also proceeded further and vide notice dated 13.2.2004, the petitioner was intimated by the disciplinary authority that he had concurred with the view of the Inquiry Officer and had called upon to submit reply. It may also be recorded that vide order dated 18.6.1994, the Inquiry Officer, was appointed and the report of the Inquiry Officer came to be submitted on 31.12.1996. It is under these circumstances, the petitioner has approached this Court seeking appropriate writ to direct the respondents to reinstate the petitioner to the original post of Jr. Pharmacist with full back-wages and continuity of service as if the dismissal order was never passed.

4. Pending the main Special Civil Application, Civil Application No.11568 of 2006 was preferred by the petitioner, directing the respondents to reinstate the petitioner by way of inter order,

subject to the contentions of both the sides at the time of final disposal. This Court (Coram: H.K. Rathod, J.) vide order dated 23.11.2006 directed the petitioner – applicant therein to make representation and the authority was directed to take decision. Thereafter, the decision has been taken on 9.1.2007, whereby the prayer of the petitioner of reinstatement is denied mainly on two aspects; one is that in the disciplinary proceedings as per the report of the Inquiry Officer the charges were proved and the second is that against the order of the Sessions Court of setting aside the conviction, Criminal Appeal No.2282 of 2004 is preferred before the High Court and the same is pending. It may be recorded that in the Criminal Appeal No.2282 of 2004, this Court (Coram: H.B. Antani, J.) on 17.3.2006 has passed the following order:-

> “1. Leave granted. Appeal admitted.
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> 2. Bailable warrant in the sum of Rs.5,000/- (Rupees Five Thousand Only) be issued to the respondent.”

5. In view of the order dated 9.1.2007 passed by the competent authority, the petitioner has preferred once again Civil Application No.7841 of 2007 for reinstatement in service, subject to the contentions of both the sides at the time of final disposal. Under these circumstances, the main Special Civil Application itself is taken up for final hearing.

6. Heard Mr.Joshi, learned Counsel for the petitioner and Mr.Pandya, learned AGP for the State Authorities.

7. It appears that the following aspects are undisputed:-

(a) The criminal case is filed against the petitioner being C.R. No.78 of 1993 on 27.4.1993;

(b) On 15.9.1993 the order was passed for issuing charge-sheet and holding departmental inquiry;

(c) On 18.6.1994, the inquiry was assigned to the Inquiry Officer in the disciplinary proceedings.

(d) On 2.5.1994, he was placed under

suspension;

(e) On 1.7.1997, the Inquiry Officer has submitted the report and the charges are proved;

(f) On 31.12.2003, the order of conviction was passed against the petitioner by the Chief Judicial magistrate;

(g) On 6.11.2004, the Sessions Court allowed the appeal and conviction was set aside;

(h) On 17.3.2006, this Court has granted leave and admitted appeal against the acquittal and bailable warrant was issued for Rs.5,000/-;

(i) On 9.1.2007, pending the petition, decision has been taken not to reinstate the petitioner.

8. In view of the aforesaid factual aspects, the question arises for consideration is as to whether the petitioner is entitled to the reinstatement or not ?

9. It is by now well settled that even if the criminal proceedings are initiated in connection with any offence concerning to the discharge of duty by a Government Employee, it is open to the Department to initiate

disciplinary proceedings and the same was undertaken in the present case. It is also well settled that if the requirement of Rule 5(2) of the Gujarat Civil Service (Discipline and Appeal) Rules, 1971 (hereinafter referred to as "the Rules") are satisfied due to the arrest of such Government Employee in connection with the criminal offence and he is in police custody, he can be suspended from service. It is also well settled that considering the gravity of the charges in the disciplinary proceedings, the competent authority may exercise discretion to suspend the employee concerned, either pending the contemplated inquiry or pending the inquiry.

10. In the present case, the petitioner came to be placed under suspension vide order dated 2.5.1994 read with order dated 9.9.1994, not because of contemplated disciplinary proceedings, but because of his arrest and he being in police custody. It is true that pending criminal proceedings before the Criminal Court, the disciplinary proceedings are also initiated namely; that he has been charge-

sheeted; Inquiry Officer has been appointed; and the proceedings have been conducted by the Inquiry Officer; and the Inquiry Officer has submitted his report, wherein the charges against the petitioner are proved and the disciplinary authority has further concurred with the view of the Inquiry Officer and has called for the reply. But no order of dismissal was passed in such disciplinary proceedings and the order of dismissal dated 18.3.2004 was passed based on the order of conviction dated 31.12.2003 passed by the Criminal Court in Criminal Case No.13 of 2002. The said order of conviction is set aside by the Sessions Court and, therefore, the basis of the order of dismissal is not in existence as per the order of the Sessions Court, subject to the rider that the appeal against the acquittal is preferred by the State and the appeal has been admitted. Where either the Criminal Court has acquitted the Government Employee or the appeal is admitted and the warrant has been issued against the employee concerned may be a justifiable

ground for the concerned employee to seek reinstatement in service, in normal circumstances, if the order of dismissal is only based on the order of conviction. However, such principle is not a *sine qua non*. It may vary from facts to facts and the gravity of the criminal case, which is being faced by such employee. To say in other words, if the gravity of the charges in the criminal case is so serious and has direct nexus with the discharge of duty by the concerned employee, the authority may exercise discretion of not to permit such employee to discharge duty to his original post, but in such circumstances, order of dismissal shall be required to be revoked and the employee concerned may be placed under suspension. However, if the charges in the criminal case against the concerned employee are not so serious, which may have direct nexus to the discharge of duty, the competent authority may exercise the discretion of permitting the employee to discharge duty by reinstatement in service. However, it can not be concluded that

the criminal proceedings have ended, in a case where the appeal against the acquittal has been admitted by the Court and the warrant has been issued in such criminal appeal.

11. At the same time, pending the aforesaid, if the disciplinary proceedings have commenced and have proceeded further, it is open to the disciplinary authority to proceed, in accordance with law, and to pass final order by concluding the disciplinary proceedings.

12. It appears from the order dated 9.1.2007 passed by the Commissioner, Health, Medical Services that neither the question of reinstatement, nor permitting the petitioner to discharge duty in service; nor the reinstatement and the question of suspension pending the proceedings before the Criminal Court and/or pending the proceedings of appeal before this Court and/or further continuation with the disciplinary proceedings and conclusion thereof is considered, but the reinstatement is denied, without examining the aspect of charges being faced by such employee in the criminal case and that the disciplinary

proceedings have not concluded into the order of dismissal or otherwise. Even if it is considered that in the report of the Inquiry officer, the charges are proved, it would be required for the disciplinary authority to follow the procedure in accordance with law from that stage for concluding the matter in the disciplinary proceedings. But until the final order is passed in the disciplinary proceedings in either way or until the criminal appeal is finally decided by this Court, the status of the petitioner as then in existence prior to the order of conviction by the Criminal Court, in any case, is required to be restored and maintained.

13. As observed earlier, after reinstatement in view of the seriousness of the charges or on account of the disciplinary proceedings, the competent authority may exercise discretion to place the employee concerned under suspension or may permit him to discharge duty to his original post. Such decision is required to be taken objectively, keeping in view the gravity of the

charges, the status of the disciplinary proceedings as well as the nature of duty to be discharged by such employee if reinstated and permitted to discharge duty.

14. It appears that the aforesaid aspects are not considered by Respondent No.2, who is competent to take decision and exercise the power and, therefore, it would be just and proper to direct Respondent No.2 to reconsider the matter in light of the observations made hereinabove and to render the decision afresh within some reasonable time.

15. In view of the above, the order dated 9.1.2007 passed by Respondent No.2 is quashed and set aside with the direction that Respondent No.2 shall reconsider the matter afresh in light of the observations made by this Court in the present judgement and in accordance with law, as early as possible, but not later than three months from the date of receipt of the judgement of this Court.

16. The main petition is partly allowed to the aforesaid extent. Rule made absolutely to the

aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs.

17. In view of the order passed in the main petition, the Civil Application shall also stand disposed of accordingly.

26.11.2007 **(Jayant Patel, J.)**

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